

Condoms and HIV

The State of the Debate

William Newton, Ph.D.

Dr. Newton is assistant professor at the International Theological Institute in Trumau, Austria. He may be reached at w.newton@iti.ac.at.

Abstract

*Even among moral theologians who strongly support the Church's teaching on contraception enshrined in *Humanae vitae*, there is disagreement as to whether condoms might be used when one spouse is infected with HIV. Between 2004 and 2008 there was a vigorous, yet respectful, debate about this question in various Catholic journals, spawned by an article in *The Tablet* by Fr. Martin Rhonheimer. The aim of this essay is to present the current state of this debate, clarifying the central arguments of each side, what has been achieved through the debate, and what points of difference remain.*

When the highly respected and doctrinally orthodox moral philosopher Fr. Martin Rhonheimer wrote in *The Tablet* that he believed that “the moral norm condemning contraception as intrinsically evil does not apply” to the case of married couples who used condoms to prevent the transmission of HIV,¹ he sparked a vigorous debate amongst moralists who, like him, support the teaching of *Humanae vitae*.² Now that the dust kicked up by this debate has settled somewhat, despite neither side conceding any significant ground, it seems opportune to try to summarize the essentials of this debate and make some comments on the development in understanding about this issue that was the fruit of this debate.

Here, I will not focus on the recent comments made by Benedict XVI in Peter Seewald's book *Light of the World*. In that book, he says

The Linacre Quarterly 78(1) (February 2011): 029–044.
© 2011 by the Catholic Medical Association. All rights reserved.
0024-3639/2011/7801-0003 \$.30/page.

that in some cases the use of condoms can be tolerated if “the intention [is] of reducing the risk of infection” when this is “a first step in a movement toward a different way, a more human way, of living sexuality.” He clarifies what he means by saying:

[T]here may be a basis [for using condoms] in the case of some individuals, as perhaps when a male prostitute uses a condom, where this can be a first step in the direction of a moralization, a first assumption of responsibility, on the way toward recovering an awareness that not everything is allowed and that one cannot do whatever one wants.³

Clearly, then, these comments relate to the question of using condoms as part of otherwise disordered sexual behavior. It amounts to the same thing as saying a mugger who steals the wallet of an old woman late at night but who leaves her five dollars to get a bus home has shown an inkling of decency that might, one day, lead him to stop robbing people. The question for us is different. It is whether sexual intercourse between married couples with the use of a condom (when one is infected) can be a good act of sexual intercourse compatible with marital love, even meritorious, rather than the first rung on a ladder of conversion.

A Contraceptive Choice?

The debate over whether the use of condoms by spouses to stop HIV infection is a contraceptive choice revolves around how the *object* of a human action is to be specified. In this way it is similar to other bioethical issues such as craniotomy and tubal pregnancy.⁴ In all these cases, the key question is, what exactly is the agent choosing when this behavior is chosen?

John Paul II called attention to the importance of focusing on the object of action in his encyclical *Veritatis splendor*. In an effort to combat the errant tendency of putting too much emphasis on the remote goal of human action (the end)—an emphasis that easily becomes “the end justifies the means”—the Holy Father reminded moral theologians of the importance of focusing on the proximate end, the *object*, of human action. In one of the most important passages from *Veritatis splendor*, John Paul II defines the object of a human action in the following terms: “In order to be able to grasp the object of an act which specifies that act morally, it is therefore necessary to place oneself *in the perspective of the acting person*. The object of the act of willing is in fact a freely chosen kind of behavior.”⁵ Rhonheimer takes this invitation to step into the shoes of the acting person to mean that, in determining the object of an action, what primarily counts is the *intention* of the agent when he chooses this or that action. This, Rhonheimer notes, is decisive for giving an accurate *moral* description of what someone is doing. So, if we take a *physical* action and want to describe it *morally*, we must ask what the aim of the agent was when he chose to do that action. Rhonheimer gives us an example that he finds in St. Thomas.⁶ One man kills another:

John shoots James. The key question then becomes this: “what is going on here?” How do we *morally* describe John’s action?

Rhonheimer points out that to give an adequate moral description of this action, we need a bit more information. What was John’s proximate goal? Placing ourselves in his shoes we must ask what he really chose to do here. If James was coming at him with a machete and murder in his eyes, and John shot James to prevent the attack, then John’s action, morally speaking, is self-defense. If James was minding his own business and John decided to kill him with no just reason, then the moral species of the action is murder. Clearly, the reason for the choice is of fundamental importance. This allows us to go from a physical description of the action to a moral description.⁷

Applying this understanding of human action to the scenario of a couple using condoms when one spouse has HIV, Rhonheimer claims that the couple are not choosing to contracept, by which he means, they are not choosing to have sterilized sex. The physical description of their action is sexual intercourse with a condom, but this, he claims, is not the moral description. What they are choosing, he alleges, is to have sexual intercourse but in such a way that deadly cross infection is prevented. Having sex in this way does frustrate the natural end of sexual intercourse—condoms were designed to stop conception—but this effect is *praeter intentionem*—outside or beyond the intention of the couple. Rhonheimer expresses himself as follows:

Now, “having sexual intercourse by using a condom” is the description of an act in its natural species (we have to refrain from intuitively including up front that this is done in order to prevent conception). Only when it is conceived as being related to an end can this act be understood as a *human act* and in its moral species. It is morally different to use a condom in order to “prevent conception” versus in order to “prevent infection”; I hold that the latter can be reasonably done without referring it to a contraceptive end, as in the case of a knowingly sterile couple in which one spouse is HIV-infected.⁸

Rhonheimer draws support for his position from an analogous situation. Everyone seems to be in agreement that a woman who takes a pill that stops ovulation for therapeutic reasons (heavy menstrual bleeding, endometriosis, and so on) is not choosing to contracept when she engages in marital intercourse. Now, there is a difference, as some moralists note, between the two cases but there is a similarity in that in both cases contraception is *praeter intentionem*.⁹ Rhonheimer says:

She does not choose an act of “sterilization” (“permanent contraception,” as it were) in the sense in which it is prohibited by *Humanae Vitae*. This is so *only because she does not intend this*. Even though she does something which prevents her sexual acts from being fertile, she does not do what she does *proposing* to prevent these foreseen acts from being fertile. The reason, *and the only reason*, why therapeutic sterilization is not illicit sterilization, is that the

contraceptive effect is intended neither as an end nor as a means; that is, it is what the tradition has called *praeter intentionem*, “beside the intention” (or “outside,” “beyond” the intention).¹⁰

Some other moralists, notably Janet Smith, Benedict Guevin, and Stephen Long, disagree with Rhonheimer’s analysis of what is being chosen in such cases. According to Smith, “condom use by fertile heterosexuals always retains a *contraceptive* meaning, even when done to reduce the risk of transmitting disease.”¹¹ She claims that “the use of a condom by fertile heterosexuals always involves a contraceptive intentionality even if the spouses themselves disavow a contraceptive intention.”¹² Smith bases her position on the claim that some actions have “embedded meaning”¹³ in such a way that even if this meaning is not the main focus of choice, it cannot be shed and must be included in an accurate description of the object of the action. She says:

I maintain that even though something is not intended as the end of the agent, the *finis operantis*, if it is chosen as a means to the end of the agent it too is an essential component of the act and enters into the moral evaluation of the action. It is “beside” the primary intention of the agent but it nonetheless has its own *telos* or end or meaning, and insofar as it is chosen as an essential element of the larger action its inherent *telos* is part of that action: it is not undertaken *per accidens* but is essential to the action.¹⁴

Smith gives an amusing example on what she means by embedded meaning: “if Joe ate hotdogs to win an eating contest, Joe would necessarily need to will absorbing the calories possessed by hotdogs.”¹⁵ In light of this understanding, Smith clarifies her position in the following way: “I do not think that intention is necessary; in fact, I think that the Church rightly teaches that it is possible to contracept unintentionally. I think that altering the sexual act to prevent conception—whether or not one intends to do so, is what the Church means by contraception.”¹⁶ Guevin concurs with Smith. He says that “the subjective intention of the couple may not be contraceptive” but “the objective intention of the couple is, because they are choosing to alter the finality of the sexual act.”¹⁷

Long also holds that objective factors and not only the intention are important in determining the object of a human action. He says that “the object always includes the integral nature of the act itself.”¹⁸ In light of this, he concludes that “what makes the act contraceptive is *not merely what the agent has in mind but the nature of the act itself*.”¹⁹ In support of this position, he gives an even more dramatic scenario than Smith when he says: “[I]f one may choose to use a condom in a particular conjugal act licitly because one also wishes to avoid the spread of a disease, it should be licit likewise to burn a human person to death because one wishes to light up the darkness.”²⁰

Rhonheimer claims that he too takes sufficient cognizance of objective aspects in defining the object of human action. He protests against Long categorizing him (along with Germain Grisez) as holding the “view

of the object of the moral act as simply that which the agent proposes to himself." He says, rather, his position is that the object is "not simply and exclusively shaped by 'that which the agent proposes to himself,' but also by "brute facts of nature, objective circumstances, [and] givens."²¹

Elsewhere, Rhonheimer explains the object of the act in relation to fornication. He gives a scenario of Jane and Jim choosing to have sexual intercourse. For Jim, the marital status of Jane, the fact she is not his wife, is immaterial. Jim is not concerned about this and so, in his intending to have sex with Jane, her marital status is *praeter intentionem*. Yet, according to Rhonheimer, Jane's marital status "is a circumstance that, in this specific situation, is given and is thus prior to choice.... It is recognizable only by reason and it confers on the chosen behavior an inherent, though not simply naturally given, 'form.'"²² The point is, the object of Jim's act is determined by objective elements outside his intention, namely Jane's marital status.

In another place, Rhonheimer explicitly distances himself from those moralists who place all the weight on intention in determining the object of human action. He strongly disagrees with Germain Grisez, John Finis, and Joseph Boyle that a person who blows up a plane full of passengers to make a fraudulent insurance claim is not guilty of murder (direct killing).²³ He disagrees with this precisely because the circumstance of the plane being full of people is "a principal condition of the object repugnant to reason." Rhonheimer writes:

I am certain that St. Thomas would not accept such a description of this choice [offered by Grisez et al.]. He would say, rather, that the circumstance of the presence of the passengers in the airplane is a "principalis conditio obiecti rationi repugnans," which causes a "differentia essentialis obiecti": the killing of the passengers, therefore, must be included in the description of the object; indeed, precisely this would be the object.²⁴

Significantly, in this passage, Rhonheimer points us to a pertinent aspect of St. Thomas's moral theory, namely the influence of circumstances in determining the object of action.²⁵ St. Thomas notes that the object of an action can be changed by a circumstance that is contrary to reason. In such cases, the circumstance becomes the "principal condition of the object." Thomas gives the example of a thief who steals from a Church. In this scenario, taking the goods of another is *what* the thief chooses to do, whereas the Church (a holy place) is, from one perspective, only a circumstance of the action: it is *where* the action took place. Yet, taken as the "principal condition of the object," it makes the species of sin sacrilege. Now there are two moral species for the one action: theft and sacrilege.

It is worth noting that, in this scenario, the thief does not need to intend to steal from a Church for the action to be sacrilege. All that is required is that the place of the crime is a holy place and that the thief is at least aware of this and willing to proceed in thieving despite this. In this sense the circumstance is voluntary.²⁶

Understanding the place of circumstances in determining the object of choice is critical for an accurate description of what is going on in the use of condoms to prevent HIV cross-infection between spouses. This is because, as Rhonheimer argues, in what some call condomized sex, the choice made is that of marital intercourse, whereas wearing a condom and the consequent sterilization of the sexual act is a condition or *circumstance*. In the terminology of St. Thomas, marital intercourse is *what* the spouses choose; wearing a condom and the sterilization are the circumstances of *how* the act of intercourse is executed.²⁷ The question then becomes this: is this circumstance a “principal condition of the object repugnant to reason” or not? Does this circumstance modify the object of choice in this case?

As far as I am aware, when discussing the use of condoms to stop the spread of HIV, despite describing the use of a condom as a circumstance of the action, Rhonheimer never directly addresses the question of whether the use of a condom and the resultant sterilization are a “principal condition of the object repugnant to reason.” The reason for this omission is, most probably, that he does not think the resulting sterilization is something “repugnant to reason” because for him this sterility is a physical evil and not a moral evil. He defines contraception as “the choice of an act that prevents freely chosen performances of sexual intercourse, which are foreseen to have procreative consequences, from having those consequences, *and which is a choice made just for this reason.*”²⁸ With such a definition, the sterility is only of moral significance when it is intended.

Of course, Long comes to a different conclusion because he has a different definition of contraception. For him, the sin of contraception is to choose to have sex and to do this in such a way as to frustrate the procreative end, whether the motive is sterilization or not.²⁹ Considered in this way, the sterility of so-called condomized sex is morally significant, contrary to reason, and a principal condition of the object.

For anyone to come to the same conclusion as Rhonheimer, he must hold that the scenario of using a condom to prevent HIV infection is indeed different, with regard to the significance of circumstances, from torching a person to light up the darkness (the analogy given by Long). In Long’s scenario, it is not necessary to *intend* the circumstance to make it contrary to reason, so one might wonder why it is necessary that the sterilization of the marital act must be *intended* to make it contrary to reason. Yet there does seem to be a difference. Sexual intercourse is commonly physically sterile, one might say normally sterile. Nature intends this for her own purposes. However, it is not usual for a person to die when the night sky is illuminated.

Is this difference significant? I suggest it is, but let us assume for a moment that it is not. Let us take the more cautious view, proposed by Smith, Guevin, and Long, that the sterilizing effect of the condom need not be intended for it to be a circumstance contrary to reason. Would this necessarily lead to the opposite conclusion, to saying that the use of

condoms to prevent HIV was a contraceptive choice? The answer is still no. The reason is that if there is a good reason to tolerate an otherwise vitiating circumstance, this circumstance will not change the species of an action.

So, for example, a doctor must always seek the consent of his patients before operating on them. If a doctor were to operate without consent, what the doctor chose to do would certainly be to operate, but the lack of consent would be a circumstance of the action, and a significant one. It would be “a principal condition of the object repugnant to reason.” Accordingly, to proceed without consent would be to change the object of choice from operating to mutilating. But if a doctor is operating on a patient (with his consent) say to remove gall stones, and during the operation comes across an inflamed appendix—inflamed to a life-threatening degree—he could remove the appendix without the consent of the patient, and this would not change the species of action. In this particular case, the circumstance of “non-consent” is not significant.

The case of using condoms is analogous to this in the sense that even if we accept that, normally speaking, using a condom and the unintended sterilization would be a weighty enough condition or circumstance of marital intercourse to change its species into something else—an act of contraceptive sex—given the aim of preventing a death-dealing infection, it can be tolerated (as lack of consent was tolerated in the case of the inflamed appendix), and the species of the act is not altered.

It should be emphasized that this analysis, based as it is on the claim that preventing HIV infection is a proportionate reason not to include the attendant sterilization as a principal condition of the object, is not akin to proportionalism. There is no weighing of goods here that concludes preventing infection is a greater good than fecundity. These goods are not placed on some imaginary scales with the latter tipping the balance. The only judgment is that the aim of avoiding infection is grave enough to exclude sterilization being a pertinent circumstance. Moreover, in no way is the sterilization of the marital act embraced in itself as a suitable means to attaining another goal, namely marital sexual communion without the risk of infection; it is simply foreseen and tolerated.

Nor is this analysis an application of the principle of double effect, else we would have to say that the good of health (or prevention of infection) is achieved through the evil of contraception; but this, clearly, contravenes a fundamental tenant of the principle of double effect. The principle of double effect *presupposes* we already know the object of action and that it is good or indifferent. Rather, here we are seeking to define the object of action by a consideration of which circumstances are important enough to be a principal condition of the object.

The conclusion, then, is that, even if we take the more cautious approach and hold that the sterilizing effect of a condom need not be intended for it to be taken as a circumstance contrary to reason, this does not lead to the conclusion that, in this particular case, it is a principle

condition of the object and so specifying of the object of choice. To put this conclusion in greater relief let us briefly consider two more points.

First, this situation is different from the scenario of a married couple who should not conceive because conception would be life-threatening for the wife and who use a condom to attain this goal.³⁰ Admittedly, there is a certain similarity to the case of using condoms to stop HIV infection. In both cases *what* is chosen is marital intercourse, while the mode of action—the circumstance (*how* the act was executed)—is with the aid of a condom. Also, in both cases there is a situation where the consequences of sexual intercourse could be fatal. However, the difference is that in the case of the wife who should not get pregnant, the circumstance—the contraceptive sterilization of the sexual act—is not *praeter intentionem* at all. Unlike the HIV couple, she and her husband want the condom to work in this way, and so the circumstance of condomized sterilization certainly becomes a principal condition of the object of choice.

Second, again taking the more cautious approach, for the HIV couple, the circumstance of using a condom which renders the sexual act infertile does not change the species of action because there is a serious reason to tolerate the sterilizing effect. Were the reason not so serious, such as using condoms because condomized sex is more comfortable, then the use of a condom would not be tolerable, in the same way that the doctor in our scenario (removing gall stones) would not be excused if he removed the appendix (without consent) because he deems all appendices useless. In such a case, his reason for proceeding without consent is weak and the resulting operation-without-consent would be mutilation. When we apply this reasoning to the use of condoms by spouses to prevent sexually transmitted diseases, it seems to preclude the use of condoms to stop other less serious diseases such as Chlamydia. Note, also, that if medical advances were to render AIDS less deadly, then it seems that the use of condoms to stop its transmission could no longer be tolerated as a circumstance. Remember, this conclusion derives from taking the more cautious approach of Smith, Guevin, and Long. Since, for Rhonheimer, only intending the sterilization of condomized sex counts, even more trivial reasons for using a condom—such as it being more comfortable—would seem to result in the conclusion that there is still no contraceptive choice.³¹

So, we conclude that when a married couple of which one is infected with HIV uses a condom during sexual intercourse so that the infection will not pass to the other, they are not choosing to contracept. This is true whether or not we take the view that the contraceptive effect of the condom must be intended in order for it to be morally significant. However, this alone is not enough to conclude that it is morally licit for couples in such situations to use condoms. Other moralists, such as William May, David Crawford, Anthony Fisher, and Luke Gormally, agree with Rhonheimer that the choice involved is not the choice of contraception, but they disagree that condoms can be used in such cases

because, in the words of May, such behavior involves choosing “an ‘unnatural’ or perverted sexual act, and cannot be regarded as a true act of marriage.”³² This is what we now need to consider.

A Corruption of Marital Intercourse?

It seems that most theologians who oppose Rhonheimer’s assessment of the use of condoms in the case of HIV infection do so *not* on the basis that it is a contraceptive choice but on the basis that the resulting sexual act is not the marital act but some perversion of it.

Some authors point to the requirements laid down in *Humanae vitae* that every marital act must respect the unity of the twofold dimension of marital intercourse, namely the unitive and procreative meanings of the act.³³ To do this, *Humanae vitae* tells us, each act must be “ordained in itself to the procreating of human life.”³⁴ Guevin claims that all condomized sex sunders this connection: “[T]he only means by which the couple can engage in HIV-free sexual intercourse is to sever the unitive meaning of their act from its procreative meaning.”³⁵

Rhonheimer’s response is that what is required is *intentional* openness to life, not *physical* openness. He says this because many (if not most) marital acts are *physically* sterile:

[B]eing “in itself ordained to the transmission of human life” (*ad vitam procreandam per se destinatus*), which is most commonly referred to as the “openness” of each marital act to the procreation of new life, cannot reasonably be understood as *physical* openness to the possibility of procreation. This is obvious because otherwise sexual intercourse in knowingly infertile times—and most natural family planning—or that engaged in by entirely sterile couples (because of age or disease) would be morally illicit.³⁶

A similar objection and response could, of course, be given to the canonical requirement for marital consummation that the sexual act be “per se apt for generation.”³⁷ Since “per se apt for generation” is effectively the same as “in itself ordained to the transmission of human life,” Rhonheimer’s point is that the *per se* aptness must be an intentional aptness not a physical aptness. In these cases, again we come up against the same impasse between the two camps. Just as in the debate over the correct description of the object of action, here the difference of opinion is over whether the corruption of the marital act requires the *intentional* sterilization of the act.

Others seek to answer the question with the help of John Paul II’s theology of the body. In this, they are seemingly given encouragement by *Veritatis splendor*, which speaks of discovering “in the body the anticipatory signs, the expression and the promise of the gift of self, in conformity with the wise plan of the Creator.”³⁸ The question then becomes, what kind of bodily act is needed to authentically express, in sexual intercourse, a total mutual gift of self? What bodily action is needed to authentically speak the language of the body?

David Crawford argues that insemination—ejaculation into the vagina—is needed to speak the language of the body authentically. He says that the language of the body “implies a communication of the very substance of the man (his ‘flesh’, his unique personal identity, which is in fact inscribed genetically in his semen) to the woman, whose body is uniquely made to receive this communication.”³⁹ Smith makes the same point when she says that “condomized sexual intercourse is similar to *coitus interruptus* because in both cases the male does not truly give of himself to the female; he leaves nothing of himself behind.”⁴⁰

Rhonheimer agrees that the language of the body is important but disagrees, one might say, about the vocabulary of this language. He says the question is this: “what is the exact ‘vocabulary’ of this language of the body, how can we know which patterns of nature are morally significant, and in which way and to what extent are they morally significant?”

Rhonheimer, of course, claims that insemination (understood as ejaculation into the vagina of the wife) is not an essential part of the vocabulary of complete gift, and he points out that John Paul II himself never addressed the question of insemination in his theology of the body.⁴¹

Despite the absence of a discussion of the significance of insemination in the theology of the body, if we take our lead from the world of canon law, then it does seem that insemination is required for authentic marital intercourse because it is required for the consummation of marriage. The premise here is that the act of consummation is the archetype marital act and that other types of sexual act are measured against this standard. Now, the common opinion of canonists is that for consummation there must be penetration *and* ejaculation of semen in the vagina.⁴² A man who cannot produce any semen (this does not have to include spermatozoa) cannot consummate a marriage.⁴³ This seems to be a physical prerequisite for consummation. Just having an intention to inseminate and being impeded from inseminating unintentionally does not suffice for consummation.

Rhonheimer is, of course, aware of the canonical tradition and so, on this point, he treads very carefully. He says:

I acknowledge the strength and coherence of the canonistic tradition and am aware of the difficulty of challenging it. I do not do this without taking into account the possibility that I might be wrong. Yet my view seems to me more congruent with the magisterium after *Humanae vitae*, and especially the pontificate of John Paul II, at least as I understand it. I will not have any difficulty, however, in submitting to a future decision by the Holy See on this subject.⁴⁴

His view—“more congruent with the magisterium”—is that what is required for consummation is ejaculation *in* the vagina not *into* the vagina, coupled with the absence of an intention to impede “the natural purpose of insemination, which is to conceive new human life.”⁴⁵

This position, he contends, is ethically more pleasing because it does not make what he thinks is a counter-intuitive distinction between

condomistic contraception and hormonal contraception when it comes to consummation. He believes that since both behaviors intentionally render the sexual act *not* “per se apt for generation,” both should prevent consummation (when the intention is contraceptive). In this way, both the male and the female contribution to the act are equally important.⁴⁶

A final point with regard to insemination: those who claim it is a necessary part of the marital act are keen to defend themselves against the charge of physicalism. Physicalism here is understood as equating moral requirements of human action with physical requirements.

As far as I can see, Rhonheimer never directly accuses his opponents of physicalism, though of Smith’s position he says that she “apparently thinks that Thomistic and Catholic teaching on intrinsically evil acts refers to the performance of exterior bodily acts that are deformed, without reference to whether the acts are done in a human way, through reason and will.”⁴⁷ Later, he reminds her of what John Paul II says in *Veritatis splendor* about the relationship of physical and moral dimensions of an action, namely that “by the object of a given moral act ... one cannot mean a process or an event of the merely physical order.... Rather, that object is the proximate end of a deliberate decision which determines the act of willing on the part of the acting person.”⁴⁸

That insemination would be required is not necessarily equal to falling into physicalism. Rhonheimer himself admits that not every physical action can bear the weight of the intention of the agent: “[N]ot any intention can *reasonably* inform any act or behavior.” For example, “one cannot swallow stones with the intention of nourishing oneself.”⁴⁹ There has to be a minimal correspondence between the matter of the action and the intention. A man who uses a scalpel to carve a pattern in the body of another man cannot claim to be sculpting, no matter what he says he intends. The matter is not proportioned to the form.

In the same way, there *are* some sexual actions that cannot be marital acts no matter what the person or couple intend. Masturbation and anal sex are physical actions that cannot become marital sex by the intention of the agents. All sides agree on this. The disagreement is about where the line is drawn. Smith, for example, puts condomized sex in the same group as manual and anal sex. She says:

Condomized sexual intercourse is ... essentially like masturbation—and anal and oral sex—and, I would like to add, *coitus interruptus*. All these acts aim at sexual arousal and ejaculation elsewhere than in the vagina. It seems to me to be an accidental feature that a condomized act of sexual intercourse in certain respects closely resembles a normal act of sexual intercourse.⁵⁰

Rhonheimer refutes this and seeks to distinguish between these (masturbation and anal sex) and condomized sex. The former, he claims, are the type of sexual actions that, however performed, could never lead to the end of authentic marital sex, namely conception. In contrast, condomized

sex, he says, is different from these since it is the type of sexual action that would be apt for generation if it had not been modified:

It seems to me obvious that solitary sex or acts of sodomy—anal and oral sex—are “unnatural” and even plainly “against nature”: their behavioral structure is as such not of a generative kind. The same cannot be said of condomistic sex: here the act as such is of a generative kind, but it is modified by human intervention. It is only this modification which renders the act non-generative.⁵¹

For others it is *precisely* this intentional modification—the prevention of insemination—that makes the act something else and not marital sex. At present we only have the canonical tradition on consummation to guide us on this. And, as we have seen, Rhonheimer queries the theoretical foundation of this tradition.

Conclusion

The objective of this article has been to explain and discuss the debate that has taken place in recent years concerning whether the Church could permit married couples where one is infected with HIV to use condoms to prevent cross infection.

I have not covered every aspect of that debate, but only those that have been debated most vigorously. Other possible points not addressed here include the issue of the effectiveness of condoms to prevent infection. In light of their limited effectiveness, one would also have to ask whether condomized sexual intercourse, with such risks attached, can ever be prudent, meaning in accord with right reason, even if requested by the uninfected partner. If not, then such intercourse is also immoral.

When it comes to the question of whether condomized marital sexual intercourse in the case of HIV infection is *a choice for contraception*, I think Rhonheimer’s position has been generally accepted by other moral theologians who would, like him, support the Church’s teaching as enshrined in *Humanae vitae*. The question of whether it *distorts authentic marital intercourse* is, therefore, now the heart of the debate.

The accusation leveled at the use of condoms in marital intercourse to prevent HIV infection is that in these cases the couple judge it too dangerous to engage in normal marital intercourse and so modify the action, making it some other type of sexual act.

The canonical requirements for consummation—according to the tradition—support this negative judgment. Consummation is the archetype marital act, and the canonical tradition points to the requirement for *insemination*—the depositing of the husband’s semen into the wife’s vagina. Insemination appears to be a physical prerequisite for an authentic intention to perform a marital act of sexual intercourse, and, accordingly, condomized sex cannot consummate a marriage and so cannot be marital intercourse.

However, building an argument on canonical tradition does not make the argument certain.

This tradition is not an infallible declaration; it could be modified. Furthermore, the theological foundation for this tradition, it seems to me, awaits a decisive theological elaboration. The theological foundation for this tradition is unclear and so it can appear arbitrary. The absence of this adds to the provisional character of the judgment that the use of a condom in these cases is wrong.

In conclusion, it seems fair to say that the arguments of neither side of the debate are so strong as to lay a knockout blow on their opponents. The debate has reached a natural and amicable impasse, and the judgment of the Magisterium is awaited. As we have noted in the first half of this article, the question of whether the use of condoms to prevent HIV infection is a contraceptive choice turns upon an accurate description of the object of action, and particularly on the extent to which objective criteria along with intention determine the object of choice. This very same debate has moved in recent years to a new locus, namely issues of vital conflict such as craniotomy and tubal pregnancy. This being so, it is perhaps likely that the Magisterium will allow these debates to mature before making any interventions.

Whatever the decision of the Magisterium on this matter, it is important that the implication of Rhonheimer's position, were it to be accepted by the Church, is not misunderstood. It should be noted that in his article in *The Tablet*, Rhonheimer clearly states that "the contraceptive choice is intrinsically evil," but that this "obviously applies only to contraceptive acts," and for him the use of condoms to stop HIV is not contraception.⁵² The major part of his motivation in writing the *Tablet* article was to point out that, if the Church did allow the use of condoms in this special case, it would not have any bearing on the general prohibition of contraception precisely because, he claims, this is *not* a case of contraception.

Notes

¹ Martin Rhonheimer, "The Truth About Condoms," *Tablet* (July 10, 2004): 11.

² *Ibid.*, 10–11. Cf. Benedict Guevin and Martin Rhonheimer, "On the Use of Condoms to Prevent Acquired Immune Deficiency Syndrome," *National Catholic Bioethics Quarterly* 5 (2005): 37–48; Luke Gormally, "Marriage and the Prophylactic Use of Condoms," *National Catholic Bioethics Quarterly* 5 (2005): 735–749; Janet Smith, "The Morality of Condom Use by HIV-Infected Spouses," *Thomist* 70 (2006): 28–69; Steven Long, "The False Theory Undergirding Condomistic Exceptionalism," *National Catholic Bioethics Quarterly* (2008): 709–731; David Crawford, "Conjugal Love, Condoms, and HIV/AIDS," *Communio* 33 (2006): 505–512; William May, "Using Condoms to Prevent HIV," *National Catholic Bioethics Quarterly* 4 (2004): 667–668; Christopher Oleson, "Nature, Naturalism, and the Immorality of Contraception: A Critique of Fr. Rhonheimer

on Condom Use and Contraceptive Intent,” *National Catholic Bioethics Quarterly* 6 (2006): 719–729; Martin Rhonheimer, “The Contraceptive Choice, Condom Use, and Moral Arguments Based on Nature: A Reply to Christopher Oleson,” *National Catholic Bioethics Quarterly* 7 (2007): 273–291; Anthony Fisher, “HIV and Condoms Within Marriage,” *Communio* 36 (2009): 329–359.

³ Peter Seewald and Benedict XVI, *Light of the World: The Pope, the Church, and the Signs of the Times* (San Francisco: Ignatius Press, 2010), 119.

⁴ Cf. Martin Rhonheimer, *Vital Conflicts in Medical Ethics: A Virtue Approach to Craniotomy and Tubal Pregnancy* (Washington, D.C.: The Catholic University of America Press, 2009). Gerald Gleeson, “Medical Management of Ectopic Pregnancy,” in *Issues for a Catholic Bioethic*, ed. Luke Gormally (London: Linacre Centre, 1999), 359–370. Benedict Guevin, “Vital Conflicts and Virtue Ethics,” *National Catholic Bioethics Quarterly* 10 (2010): 471–480.

⁵ John Paul II, *Veritatis splendor*, n. 78.

⁶ Rhonheimer, “On the Use of Condoms,” 42; Cf. St. Thomas, *Summa theologiae* II-II, q. 67, a.7.

⁷ Aquinas, *Summa theologiae* I-II, q. 1, a. 3, ad 3.

⁸ Rhonheimer, “On the Use of Condoms,” 45.

⁹ The differences are at least twofold: First, the use of hormonal contraceptives can be for therapeutic reasons, while the use of a condom is not (cf. Paul VI, *Humanae vitae*, n. 15). Second, the condom is used in the sexual act itself and as a pre-condition to the act, which is not the case with the therapeutic use of hormonal contraceptives (cf. Alvin Wong, “One Physician’s Perspective on HIV Transmission and Condoms,” letter to the editor, *Linacre Quarterly* 74 [2007]: 3–6).

¹⁰ Rhonheimer, “On the Use of Condoms,” 41.

¹¹ Smith, “The Morality of Condom Use,” 30.

¹² *Ibid.*, 52.

¹³ *Ibid.*, 55. Benedict Guevin has a similar analysis but calls the “embedded meaning” objective intention, as opposed to subjective intention. See Guevin, “On the Use of Condoms,” 40.

¹⁴ Smith, “The Morality of Condom,” 56–57. Rhonheimer briefly critiques Smith’s distinction of *finis operantis* and *finis operis* in “Contraceptive Choices,” letter to the editor, *National Catholic Bioethics Quarterly* 7 (2007): 443.

¹⁵ Smith, “The Morality of Condom,” 57.

¹⁶ Janet Smith, “Contraceptive Choices,” letter to the editor, *National Catholic Bioethics Quarterly* 7 (2007): 441.

¹⁷ Guevin, “On the Use of Condoms,” 39.

¹⁸ Long, “The False Theory,” 720.

¹⁹ *Ibid.*, 722.

²⁰ *Ibid.*

²¹ Rhonheimer, *Vital Conflicts in Medical Ethics*, 85.

²² Rhonheimer, “Intentional Actions and the Meaning of Object: A Reply to Richard McCormick,” *Thomist* 59 (1995): 281.

²³ John Finnis, Germain Grisez, and Joseph Boyle, “‘Direct and Indirect’: A Reply to Critics of Our Action Theory,” *Thomist* 65 (2001): 30.

²⁴ Martin Rhonheimer, “The Perspective of the Acting Person and the Nature of Practical Reason: The ‘Object of the Human Act’ in Thomistic Anthropology of Action,” *Nova et Vetera* 2 (2004): 473 note 43.

²⁵ Cf. Aquinas, *Summa theologiae* I-II, q. 18, a. 10. Cf. Smith, “The Morality of Condom Use,” 59.

²⁶ In stating that the circumstance needs only to be voluntary in a weak sense (foreseen and accepted), I depart from the interpretation given by Steven Jensen, “Do Circumstances Give Species,” *Thomist* 70 (2006): 1–26. He states that a circumstance only becomes the principal condition of an object when it is the direct focus of the choice. Jensen says this because of what St. Thomas says about theft becoming sacrilege in *Summa theologiae* II-II, q. 53, a. 2, ad 3. There Thomas seems to indicate that the circumstance of “where,” namely, in the Church, needs to be the motive for the crime if the theft is to become sacrilege. The thief needs to say, “I steal this here *because* I want to dishonor God.” However, in *Summa theologiae* II-II, q. 53, a. 2, ad 3, Thomas is only obliquely addressing the question of the necessary voluntariness of the circumstance for it to become a principal condition of the object. When he more expressly addresses the issue in *De malo*, q. 2, a. 6, ad 6, and the commentary on the *Sentences*, b. IV d. 16, q. 3, a. 2, qa. 3, Thomas does not make such stringent demands. In *De malo* he says: “Although the will of the thief does not bear principally on the sacred vessel but on the gold, nonetheless his will bears on the sacred vessel by implication: because he wills to take the sacred vessel rather than forego the gold.”

²⁷ Rhonheimer, “The Contraceptive Choice,” 278 note 14.

²⁸ Martin Rhonheimer, “Contraception, Sexual Behaviour, and Natural Law: Philosophical Foundations of the Norm of ‘Humanae Vitae,’” *Linacre Quarterly* 56.2 (May 1989): 30, emphasis added.

²⁹ Long, “The False Theory,” 723. Note that such an articulation would not include as a contraceptive choice either using the pill for therapeutic reasons or the use of contraceptives in the case of rape. In the former case the contraceptive is not employed as part of the choice for sex, in the latter there is no choice for sex.

³⁰ Cf. Pius XII, *Allocution to Midwives*, October 29, 1951, <http://www.papalencyclicals.net/Pius12/P12midwives.htm>.

³¹ Rhonheimer gives the example of a married female athlete using hormonal contraception in order to avoid menstruation when competing in the Olympics, arguing she would not be contracepting if she were to have sex with her husband at that time (see Rhonheimer, “The Truth About Condoms,” 11). This example is more complex because the contraceptive device is not chosen in relation to acts of sexual intercourse, so it is likely that Long would agree with Rhonheimer in this case (cf. Long, “The False Theory,” 723).

³² May, “Using Condoms to Prevent HIV,” 668.

³³ Paul VI, *Humanae vitae*, n. 12.

³⁴ *Ibid.*, 11.

³⁵ Guevin, “On the Use of Condoms,” 39.

³⁶ Rhonheimer, "On the Use of Condoms," 47.

³⁷ *Code of Canon Law* (1983), can. 1061 §1, http://www.vatican.va/archive/ENG1104/___P3V.HTM.

³⁸ John Paul II, *Veritatis splendor*, n. 48.

³⁹ Crawford, "Conjugal Love," 510.

⁴⁰ Smith, "The Morality of Condom," 49.

⁴¹ Rhonheimer, "The Contraceptive Choice," 278.

⁴² John P. Beal, James A. Coriden, and Thomas J. Green, eds., *New Commentary on the Code of Canon Law* (New York: Paulist Press, 2000), 1258, quoted in Smith, "The Morality of Condom Use," 40.

⁴³ Cf. Congregation for the Doctrine of the Faith, "Decreto circa l'impotenza che rende nullo il matrimonio," May 13, 1977. The long canonical history of this matter from Pope Sixtus V's *Cum frequenter* (1587)—which ruled that eunuchs could not marry because they could not perform marital intercourse—to this declaration from the Congregation for the Doctrine of the Faith is narrated by Gormally, "Marriage and the Prophylactic Use of Condoms," 735–749; and Thomas O'Donnell, *Medicine and Christian Morality* (New York: Alba House, 1996), 215–223.

⁴⁴ Rhonheimer, "The Contraceptive Choice," 281.

⁴⁵ *Ibid.*, 278.

⁴⁶ *Ibid.*, 280. Rhonheimer implies that the canonical tradition that emphasizes insemination might be a vestige of an antiquated understanding of human conception, in which the male dimension was seen as the active contribution, while the female was passive (Rhonheimer, "The Contraceptive Choice," 279 note 16). The sperm was thought to act upon the menstrual blood and form it. This, it is postulated, may account for why the male contribution—why insemination—is emphasized, and why the use of a condom would prevent consummation, but hormonal contraception would not. This historical argument seems implausible because the tradition has not been modified in the face of the modern understanding of conception. On the contrary, it seems to have been compounded. As recently as 1977, the Congregation for the Doctrine of the Faith ruled that depositing sperm (material from the testis) is not needed for consummation (Congregation for the Doctrine of the Faith, "Decreto circa l'impotenza"). All that is required is seminal fluid. This ruling seems to indicate that the essential feature of consummation is *not* the coming together of the procreative powers but insemination. Hence it confirms the interpretation that hormonal contraception does not impede consummation.

⁴⁷ Rhonheimer, "Contraceptive Choices," letter to the editor, *National Catholic Bioethics Quarterly* 7 (2007): 444.

⁴⁸ John Paul II, *Veritatis splendor*, n. 78.

⁴⁹ Rhonheimer, "On the Use of Condoms," 45.

⁵⁰ Smith, "The Morality of Condom," 50.

⁵¹ Rhonheimer, "On the Use of Condoms," 45.

⁵² Rhonheimer, "The Truth About Condoms," 11.